

REMARKS

Reconsideration is respectfully requested. Claims 1, 3-6, 10-12, and 19-21 were previously pending in the application. Claims 1 and 3-6 have been amended for clarity. Support for these amendments is found throughout the specification; see, for example, page 2, lines 27-28. Claims 19, 20, and 21 have also been amended to correct minor typographical errors. The specification and the claims have been amended to include references to amino acid sequences using the identifier "SEQ ID NO:". Thus, no new matter has been added. Accordingly, claims 1, 3-6, 10-12, and 19-21 are now pending in the application.

Sequence listing

Applicants wish to amend the Sequence Listing pursuant to 37 C.F.R. § 1.825. Accordingly, please replace the originally filed Sequence Listing with the enclosed substitute Sequence Listing. By this amendment, SEQ ID NO: 17-41 have been added to the Sequence Listing. The substitute Sequence Listing enclosed herewith has been amended to provide the assignment of a "SEQ ID NO:" to each sequence previously presented in the original application. Thus, no new matter has been added.

Furthermore, Applicants hereby state that the amendments included in the substitute Sequence Listing are supported in the application, as filed, for the inclusion of SEQ ID NO: 17-41. Thus, the substitute Sequence Listing does not include new matter.

Pursuant to 37 C.F.R. 1.825(a) and 1.825(b), the copy of the substitute Sequence Listing in computer readable form filed concurrently herewith is the same as the paper copy of the substitute Sequence Listing being filed herewith.

Introductory remarks

Applicants thank the Examiner for acknowledging acceptance of Applicants' request for continued examination and for entering Applicants' submission filed on January 7, 2005.

Double patenting rejection

Claims 1 and 3-6 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 35-36, 38, and 41 of copending Application No. 09/623,543. In making this rejection, the Examiner has alleged that “[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because the modified antiangiogenic kringle 5 peptide identified as SEQ ID NO:8 is the same in both applications, hence intrinsically the method of manufacture would be the same and the resulting composition would retain the same properties.” While not conceding this ground for the Examiner’s rejection, Applicants have enclosed a terminal disclaimer disclaiming the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of any patent granted on pending reference Application Number 09/623,543, filed on September 5, 2000. In light of the filing of this terminal disclaimer, Applicants respectfully submit that this ground for rejection is moot and request that this rejection be withdrawn.

Claim rejections under 35 U.S.C. 112, second paragraph – indefiniteness

Claims 1, 3-6, 10-12, and 19-21 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner alleges that indefiniteness lies in lack of clarity as what are peptides are modified and whether some of the compositions claimed have both modified and unmodified kringle 5 peptides. Furthermore, the Examiner states that “[t]he language of claims 1 and 3-6 do not match that of claims 10-12 and 19-20.” The Examiner then suggests that “[c]onsistent terminology would clear up the indefiniteness of what is being claimed.”

Accordingly, Applicants have amended claims 1 and 3-6 to recite a modified kringle 5 peptide. By this amendment, Applicants have made the language of claims 1 and 3-6 consistent with the language of claims 10-12 and 19-21, as suggested by the Examiner. Thus, Applicants submit that claim indefiniteness has been eliminated through this amendment and respectfully request withdrawal of this ground for rejection.

Claim objections

According, Applicants have amended the specification to include reference to each sequence contained within the specification by means of a corresponding "SEQ ID NO:". Applicants submit that the specification is now in compliance with MPEP 2422 and 37 CFR § 1.821 and respectfully request withdrawal of this ground for objection.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 500862001400. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated:

7/29/05

Respectfully submitted,

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